

1 **WOLF, RIFKIN, SHAPIRO,**
2 **SCHULMAN & RABKIN, LLP**
3 JOHN SAMBERG, ESQ.
4 Nevada Bar No. 10828
5 ROYI MOAS, ESQ.
6 Nevada Bar No. 10686
7 3556 E. Russell Road, Second Floor
8 Las Vegas, Nevada 89120
jsamberg@wrslawyers.com
rmoas@wrslawyers.com
9 (702) 341-5200/Fax: (702) 341-5300

10 *Attorneys for Platinum Financial Trust, LLC*

11 **UNITED STATES BANKRUPTCY COURT**

12 **FOR THE DISTRICT OF NEVADA**

13 In re
14 ASSET RESOLUTION, LLC,
15 Debtor.

16 Affects:

17 ■All Debtors

18 WILLIAM A. LEONARD, JR., Chapter 7
19 Trustee,

20 Plaintiff,

21 v.

22 COMPASS USA SPE, LLC, a Delaware
23 Limited Liability Company; PLATINUM
24 FINANCIAL TRUST, LLC; an Indiana
25 Limited Liability Company

Defendants.

CASE NO. BK-S-09-32824-RCJ (Lead Case)

Jointly Administered with Case Nos.:
BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;
BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;
BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;
BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;
BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;
BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;
BK-S-09-32880-RCJ; BK-S-09-32882-RCJ

Chapter 7

ADV. CASE NO. 13-01196-rcj

**DEFENDANT PLATINUM FINANCIAL
TRUST'S ANSWER TO COMPLAINT
FOR CONSTRUCTIVE TRUST; FOR
TURNOVER; TO AVOID OR VOID
TRANSFER**

Ctrm: RCJ - Courtroom 6
Bruce R. Thompson Federal Building
400 S. Virginia Street
Reno, NV 89501

Judge: Hon. Robert C. Jones

26 **COMES NOW DEFENDANT PLATINUM FINANCIAL TRUST, LLC, a Nevada**
27 **limited liability company ("Defendant"); by and through its counsel of record Wolf, Rifkin,**
28 **Shapiro, Schulman & Rabkin, LLP, and answers and responds to the allegations in William A.**

1 Leonard, Jr.'s complaint as chapter 7 trustee of debtor Asset Resolution, LLC ("ARC" or "Asset
2 Resolution") (case number 09-32824) and as trustee of debtor HFAH Monaco SPE, LLC
3 ("Monaco") (case number 09-32868), as follows:

4 **JURISDICTION AND PARTIES**

5 1. As to Paragraph 1 of the Complaint, Defendant is without knowledge and as such
6 denies the same.

7 2. As to Paragraph 2 of the Complaint, Defendant is without knowledge and as such
8 denies the same.

9 3. As to Paragraph 3 of the Complaint, Defendant is without knowledge and as such
10 denies the same.

11 4. As to Paragraph 4 of the Complaint, Defendant is without knowledge and as such
12 denies the same.

13 5. As to Paragraph 5 of the Complaint, Defendant is without knowledge and as such
14 denies the same.

15 6. As to Paragraph 6 of the Complaint, Defendant admits that it is a core proceeding
16 based upon the Plaintiff's specific allegations, but denies the rest.

17 7. As to Paragraph 7 of the Complaint, Defendant admits.

18 8. As to Paragraph 8 of the Complaint, Defendant admits.

19 9. As to Paragraph 9 of the Complaint, Defendant is without knowledge and as such
20 denies the same.

21 10. As to Paragraph 10 of the Complaint, Defendant is without knowledge and as such
22 denies the same.

23 11. As to Paragraph 11 of the Complaint, Defendant is without knowledge and as such
24 denies the same.

25 12. As to Paragraph 12 of the Complaint, Defendant is without knowledge and as such
26 denies the same.

27 13. As to Paragraph 13 of the Complaint, Defendant is without knowledge and as such
28 denies the same.

14. As to Paragraph 14 of the Complaint, Defendant denies the same.

15. As to Paragraph 15 of the Complaint, Defendant denies the same.

3 **ANSWERING THE FIRST CLAIM FOR RELIEF**

4 (Constructive Trust)

5 16. As to Paragraph 16 of the Complaint, the paragraph does not contain any
6 allegations for which an answer is necessary, and as such, the Defendant hereby incorporates the
7 aforementioned responses and otherwise denies the same.

8 17. As to Paragraph 17 of the Complaint, Defendant denies the same.

9 18. As to Paragraph 18 of the Complaint, Defendant denies the same.

10 19. As to Paragraph 19 of the Complaint, Defendant denies that the Court should grant
11 the relief requested.

12 **ANSWERING THE SECOND CLAIM FOR RELIEF**

13 (Turnover 11 U.S.C. §542)

14 20. As to Paragraph 20 of the Complaint, the paragraph does not contain any
15 allegations for which an answer is necessary, and as such, the Defendant hereby incorporates the
16 aforementioned responses and otherwise denies the same.

17 21. As to Paragraph 21 of the Complaint, Defendant denies.

18 22. As to Paragraph 22 of the Complaint, Defendant denies that the Court should grant
19 the relief requested.

20 23. As to Paragraph 23 of the Complaint, Defendant denies that the Court should grant
21 the relief requested.

22 **ANSWERING THE THIRD CLAIM FOR RELIEF**

23 (Avoid Transfer – Violation of 11 U.S.C. § 362(a))

24 24. As to Paragraph 24 of the Complaint, the paragraph does not contain any
25 allegations for which an answer is necessary, and as such, the Defendant hereby incorporates the
26 aforementioned responses and otherwise denies the same.

27 25. As to Paragraph 25 of the Complaint, Defendant admits.

28 26. As to Paragraph 26 of the Complaint, Defendant admits Debt Acquisition Company

1 of America V, LLC assigned the judgment to Platinum, but denies the rest.

2 27. As to Paragraph 27 of the Complaint, Defendant admits.

3 28. As to Paragraph 28 of the Complaint, Defendant denies.

4 29. As to Paragraph 29 of the Complaint, Defendant admits that it recorded the
5 judgment in Lee County, Florida, but denies the same.

6 30. As to Paragraph 30 of the Complaint, Defendant denies.

7 **ANSWERING THE FOURTH CLAIM FOR RELIEF**

8 (Avoidance of Post-Petition Transfer – 11 U.S.C. § 549)

9 31. As to Paragraph 31 of the Complaint, question of law, the paragraph does not
10 contain any allegations for which an answer is necessary, and as such, the Defendant hereby
11 incorporates the aforementioned responses and otherwise denies the same.

12 32. As to Paragraph 32 of the Complaint, Defendant denies.

13 **AFFIRMATIVE DEFENSES**

14 For affirmative defenses, the Defendant alleges as follows:

15 **First Affirmative Defense**

16 Plaintiff is barred from any relief on the Complaint because the whole Complaint, and each
17 and every cause of action set forth therein, fails to state facts sufficient to constitute a claim for
18 which relief may be granted.

19 **Second Affirmative Defense**

20 Plaintiff is barred from any relief on the Complaint because Defendant is entitled to set-
21 offs for all damages and relief claimed.

22 **Third Affirmative Defense**

23 Plaintiff, individually and/or by virtue of the action of its alleged predecessors or assignors,
24 is barred from any relief on the Complaint by reason of estoppel.

25 **Fourth Affirmative Defense**

26 Plaintiff, individually and/or by virtue of the action of its alleged predecessors or assignors,
27 is barred from any relief on the Complaint because there has been a failure of consideration.

Fifth Affirmative Defense

2 Plaintiff, individually and/or by virtue of the action of its alleged predecessors or assignors,
3 is barred from any relief on the Complaint because there has been fraud in the inducement,
4 continued misrepresentations thereafter, inducement through negligent misrepresentation and/or
5 mistake of fact or law, perpetrated on Defendant by Plaintiff and their agents, predecessors, or
6 assignors.

Sixth Affirmative Defense

8 Plaintiff, individually and/or by virtue of the action of its alleged predecessors or assignors,
9 is barred from any relief on the Complaint because all the contracts, agreements, and other
10 materials on which Plaintiff relied in seeking relief are illegal, and thus void.

Seventh Affirmative Defense

12 Plaintiff, individually and/or by virtue of the action of its alleged predecessors or assignors,
13 is barred from any relief on the Complaint due to laches.

Eighth Affirmative Defense

15 Plaintiff, individually and/or by virtue of the action of its alleged predecessors or assignors,
16 is barred from any relief on the Complaint because of the statute of frauds.

Ninth Affirmative Defense

18 Plaintiff, individually and/or by virtue of the action of its alleged predecessors or assignors,
19 is barred from any relief on the Complaint because of the applicable statute of limitations.

Tenth Affirmative Defense

21 Plaintiff is barred from any relief on the Complaint because, individually and/or by virtue
22 of the action of its alleged predecessors or assignors, it waived all claims.

Eleventh Affirmative Defense

24 Plaintiff is barred from any relief on the Complaint because the terms and conditions of the
25 agreements references in the adversary complaint are unconscionable, contrary to public policy
26 and void.

Twelfth Affirmative Defense

28 Plaintiff is barred from any relief on the Complaint because all wrongful acts, errors or

1 omissions of the Defendant, as alleged in the Complaint, were caused and are excused by virtue of
2 Plaintiff's own conduct or the conduct of its alleged predecessors or assignors.

3 Thirteenth Affirmative Defense

4 Plaintiff is barred from any relief on the Complaint because Plaintiff, individually and/or
5 by virtue of the action of its alleged predecessors or assignors, is solely responsible for its own
6 damages.

7 Fourteenth Affirmative Defense

8 Plaintiff is barred from any relief on the Complaint because Plaintiff, individually and/or
9 by virtue of the action of its alleged predecessors or assignors, failed to mitigate its damages.

10 Fifteenth Affirmative Defense

11 Plaintiff is barred from any relief on the Complaint because the documents relied upon by
12 Plaintiff are void as against public policy and are illegal under the law.

13 Sixteenth Affirmative Defense

14 Plaintiff is barred from any relief on the Complaint because the documents relied upon
15 contain an illegal forfeiture provision which cannot be enforced.

16 Seventeenth Affirmative Defense

17 Plaintiff is barred from any relief on the Complaint because Plaintiff has no standing to sue
18 the Defendant.

19 Eighteenth Affirmative Defense

20 Plaintiff is barred from any relief on the Complaint because the Plaintiff's actions and
21 inactions, and or the action and inactions of its alleged predecessors or assignors, have constituted
22 a violation of Defendant's due process rights, as Defendant did not knowingly, intelligently and/or
23 voluntarily waive a known right.

24 Nineteenth Affirmative Defense

25 Plaintiff is barred from any relief on the Complaint because the actions taken by Plaintiff
26 have constituted an abuse of process and malicious prosecution.

27 Twentieth Affirmative Defense

28 Plaintiff is barred from any relief on the Complaint because Plaintiff comes to this Court

1 with unclean hands.

2 Twenty-First Affirmative Defense

3 Plaintiff is barred from any relief on the Complaint because Plaintiff comes to this Court in
4 pari dilecta with co-conspirators, agents, alter egos, and others inequitably to do harm to
5 Defendant.

6 Twenty-Third Affirmative Defense

7 Plaintiff is barred from any relief on the Complaint because a transfer of the Property to the
8 estate would result in a fraudulent transfer of the property for the purpose of avoiding judgment
9 obtained by answering Defendant against Compass USA SPE, LLC.

10 Twenty-Third Affirmative Defense

11 Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule
12 7008(a) of the Federal Rules of Bankruptcy Procedure, as if fully set forth herein. In the event
13 further investigation or discovery reveals the applicability of any such defenses, Defendant
14 reserves the right to seek leave of court to amend this answer to specifically assert any such
15 defenses. Such defenses are herein incorporated by reference for the specific purpose of not
16 waiving any such defenses.

17 Twenty-Fourth Affirmative Defense

18 This pleading is filed at the inception of the litigation and the Defendant expressly reserves
19 the right to supplement, amend, and or modify this answer to include additional affirmative
20 defenses, cross-claims, counterclaims, or otherwise, should they become known, whether legal
21 equitable statutory or based in good faith on any other theory or legally cognizable rights.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, the Defendant prays for the following relief:

24 1. Plaintiff takes nothing by the virtue of its Complaint;

25 2. Plaintiff's Complaint will be dismissed with prejudice;

26 3. Defendant's effort to foreclose on any judgment liens or liens on the Property be
27 permitted;

28 4. Defendant's first position in the property be recognized; and

1 5. For any other relief the Court deems proper.

2 DATED this 22nd day of November, 2013

3 **WOLF, RIFKIN, SHAPIRO,**
4 **SCHULMAN & RABKIN, LLP**

5 By: /s/ Royi Moas, Esq.

6 ROYI MOAS, ESQ.
7 Nevada Bar No. 10686
8 3556 E. Russell Road, Second Floor
9 Las Vegas, Nevada 89120
rmoas@wrslawyers.com
(702) 341-5200/Fax: (702) 341-5300
10 Attorneys for Platinum Financial Trust, LLC

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **CERTIFICATE OF SERVICE**

2 On November 22, 2013, I served the foregoing documents described as **ANSWER TO**
3 **COMPLAINT FOR CONSTRUCTIVE TRUST; FOR TURNOVER; TO AVOID OR VOID**
4 **TRANSFER** on the following individuals by:

5 ■ VIA ECF FILING: by electronically mailing to the parties that are registered or
6 otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing
7 Procedures in this District.

8 TRUSTEE
9 WILLIAM A. LEONARD, JR
dabbieri@sullivanhill.com

10 James P. Hill
11 Jonathan S. Dabbieri
12 Elizabeth E. Stephens
13 SULLIVAN, HILL, LEWIN, REZ & ENGEL
14 A Professional Law Corporation
15 dabbieri@sullivanhill.com

16 and by:

17 ■ MAIL: by placing a true copy(ies) thereof in a sealed envelope(s) in the outgoing
18 mail tray located in my office for deposit in the United States mail, with postage fully prepaid,
19 addressed as shown below. I am readily familiar with the business practice at my place of business
20 for collection and processing of outgoing mail with the U.S. Postal Service that same day in the
21 ordinary course of business.

22 COMPASS USA SPE, LLC
23 C/O LAXALT & NOMURA, LTD
24 9600 GATEWAY DRIVE
25 RENO, NV 89521
26 PRO SE

27 I declare under penalty of perjury under the laws of the United States of America that the
28 foregoing is true and correct.

29 /s/ *Michael J. Hannon*

30 _____
31 Michael J. Hannon, An employee of WOLF, RIFKIN,
32 SHAPIRO, SCHULMAN & RABKIN, LLP

1 **WOLF, RIFKIN, SHAPIRO,**
2 **SCHULMAN & RABKIN, LLP**
3 JOHN SAMBERG, ESQ.
4 Nevada Bar No. 10828
5 ROYI MOAS, ESQ.
6 Nevada Bar No. 10686
7 3556 E. Russell Road, Second Floor
8 Las Vegas, Nevada 89120
jsamberg@wrslawyers.com
rmoas@wrslawyers.com
9 (702) 341-5200/Fax: (702) 341-5300

10 *Attorneys for Platinum Financial Trust, LLC*

11 **UNITED STATES BANKRUPTCY COURT**

12 **FOR THE DISTRICT OF NEVADA**

13 In re
14 ASSET RESOLUTION, LLC,
15 Debtor.

16 Affects:

17 All Debtors

18 WILLIAM A. LEONARD, JR., Chapter 7
19 Trustee,

20 Plaintiff,

21 v.

22 COMPASS USA SPE, LLC, a Delaware
23 Limited Liability Company; PLATINUM
24 FINANCIAL TRUST, LLC; an Indiana
25 Limited Liability Company

26 Defendants.

27 CASE NO. BK-S-09-32824-RCJ (Lead Case)

28 Jointly Administered with Case Nos.:
BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;
BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;
BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;
BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;
BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;
BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;
BK-S-09-32880-RCJ; BK-S-09-32882-RCJ

29 Chapter 7

30 **ADV. CASE NO. 13-01196-rcj**

31 **CERTIFICATE REQUIRED BY LR 5004**

32 Ctrm: RCJ - Courtroom 6
33 Bruce R. Thompson Federal Building
34 400 S. Virginia Street
35 Reno, NV 89501

36 Judge: Hon. Robert C. Jones

37 The undersigned, counsel of record for PLATINUM FINANCIAL TRUST, LLC; an
38 Indiana Limited Liability Company, certifies that the following have an interest in the outcome of
39 this adversary proceeding:"

40 Todd Hansen -- Greenwood, IN

41 Glen Shake – Greenwood, IN

1 These representations are made to enable judges of the court to evaluate possible recusal.
2 There are no other known interested parties other than those participating in the adversary
3 proceeding.

4 Attorney of Record for PLATINUM FINANCIAL TRUST, LLC .

5 DATED this 22nd day of November, 2013

6 **WOLF, RIFKIN, SHAPIRO,**
7 **SCHULMAN & RABKIN, LLP**

8 By: /s/ Royi Moas, Esq.
9 ROYI MOAS, ESQ.
10 Nevada Bar No. 10686
11 3556 E. Russell Road, Second Floor
12 Las Vegas, Nevada 89120
rmoas@wrslawyers.com
(702) 341-5200/Fax: (702) 341-5300
13 *Attorneys for Platinum Financial Trust, LLC*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

On November 22, 2013, I served the foregoing documents described as **ANSWER TO
COMPLAINT FOR CONSTRUCTIVE TRUST; FOR TURNOVER; TO AVOID OR VOID
TRANSFER** on the following individuals by:

- VIA ECF FILING: by electronically mailing to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

TRUSTEE
WILLIAM A. LEONARD, JR.
dabbieri@sullivanhill.com

James P. Hill
Jonathan S. Dabbieri
Elizabeth E. Stephens
SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation
dabbieri@sullivanhill.com

and by:

- MAIL: by placing a true copy(ies) thereof in a sealed envelope(s) in the outgoing mail tray located in my office for deposit in the United States mail, with postage fully prepaid, addressed as shown below. I am readily familiar with the business practice at my place of business for collection and processing of outgoing mail with the U.S. Postal Service that same day in the ordinary course of business.

COMPASS USA SPE, LLC
C/O LAXALT & NOMURA, LTD
9600 GATEWAY DRIVE
RENO, NV 89521
PRO SE

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Michael J. Hannon

Michael J. Hannon, An employee of WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

1 **WOLF, RIFKIN, SHAPIRO,**
2 **SCHULMAN & RABKIN, LLP**
3 JOHN SAMBERG, ESQ.
4 Nevada Bar No. 10828
5 ROYI MOAS, ESQ.
6 Nevada Bar No. 10686
7 3556 E. Russell Road, Second Floor
8 Las Vegas, Nevada 89120
9 jsamberg@wrslawyers.com
10 rmoas@wrslawyers.com
11 (702) 341-5200/Fax: (702) 341-5300

12 *Attorneys for Platinum Financial Trust, LLC*

13 **UNITED STATES BANKRUPTCY COURT**

14 **FOR THE DISTRICT OF NEVADA**

15 In re
16 ASSET RESOLUTION, LLC,
17 Debtor.

18 Affects:

19 All Debtors

20 WILLIAM A. LEONARD, JR., Chapter 7
21 Trustee,

22 Plaintiff,

23 v.

24 COMPASS USA SPE, LLC, a Delaware
25 Limited Liability Company; PLATINUM
26 FINANCIAL TRUST, LLC; an Indiana
27 Limited Liability Company

28 Defendants.

CASE NO. BK-S-09-32824-RCJ (Lead Case)

Jointly Administered with Case Nos.:
BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;
BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;
BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;
BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;
BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;
BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;
BK-S-09-32880-RCJ; BK-S-09-32882-RCJ

Chapter 7

ADV. CASE NO. 13-01196-rcj

**PLATINUM FINANCIAL TRUST, LLC'S
CORPORATE OWNERSHIP
STATEMENT PURSUANT TO RULE**

7007.1

Ctrm: RCJ - Courtroom 6
Bruce R. Thompson Federal Building
400 S. Virginia Street
Reno, NV 89501

Judge: Hon. Robert C. Jones

29 PLEASE TAKE NOTICE, PLATINUM FINANCIAL TRUST, LLC; an Indiana Limited
30 Liability Company, by and through its counsel of record, WOLF, RIFKIN, SHAPIRO,
31 SCHULMAN & RABKIN, LLP hereby provides its disclosure statement pursuant to Rule 7007.1,
32 and states as follows:

1 The disclosing party is not directly or indirectly owned by any corporation and there are no
2 such entities identified in subdivision (a) or Rule 7007.1.

3 Attorney of Record for PLATINUM FINANCIAL TRUST, LLC .

4 DATED this 22nd day of November, 2013

5 **WOLF, RIFKIN, SHAPIRO,**
6 **SCHULMAN & RABKIN, LLP**

7 By: /s/ Royi Moas, Esq.

8 ROYI MOAS, ESQ.
9 Nevada Bar No. 10686
10 3556 E. Russell Road, Second Floor
11 Las Vegas, Nevada 89120
rmoas@wrslawyers.com
(702) 341-5200/Fax: (702) 341-5300
12 *Attorneys for Platinum Financial Trust, LLC*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

On November 22, 2013, I served the foregoing documents described as **PLATINUM FINANCIAL TRUST, LLC'S CORPORATE OWNERSHIP STATEMENT PURSUANT TO RULE 7007.1** on the following individuals by:

- VIA ECF FILING: by electronically mailing to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

TRUSTEE
WILLIAM A. LEONARD, JR.
dabbieri@sullivanhill.com

James P. Hill
Jonathan S. Dabbieri
Elizabeth E. Stephens
SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation
dabbieri@sullivanhill.com

and by:

- MAIL: by placing a true copy(ies) thereof in a sealed envelope(s) in the outgoing mail tray located in my office for deposit in the United States mail, with postage fully prepaid, addressed as shown below. I am readily familiar with the business practice at my place of business for collection and processing of outgoing mail with the U.S. Postal Service that same day in the ordinary course of business.

COMPASS USA SPE, LLC
C/O LAXALT & NOMURA, LTD
9600 GATEWAY DRIVE
RENO, NV 89521
PRO SE

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Michael J. Hannon

Michael J. Hannon, An employee of WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP